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IN THE
Supreme Court of the United States
OCTOBER TERM, 1939

No. 681

RAILROAD COMMISSION OF TEXAS, ET AL.
Petitioners,
V.

ROWAN & NICHOLS OIL COMPANY,
Respondent.

BRIEF OF AMICI CURIAE WITH PETITION
_____/_____

J. N. SAYE,
W. T. SAYE,
Attorneys for Amici Curiae.

i.

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We, the undersigned, attorneys for the respondent, Rowan & Nichols Oil Company, have no objection to the filing of brief amici curiae by J. N. Saye and W. T. Saye, in Cause No. 681, Railroad Commission of Texas, et al, petitioners v. Rowan & Nichols Oil Company, respondent.

RICE M. TILLEY
DAN MOODY

Dated at Austin, Texas
on this the 15th day of
April, 1940.

We, Gerald C. Mann, Attorney General, W. F. Moore, First Assistant Attorney General, and James P. Hart, Assistant Attorney General, hereby consent to the filing by J. N. Saye and W. T. Saye of brief amici curiae in Cause No. 681, Railroad Commission of Texas, et al, petitioners v. Rowan & Nichols Oil Company, respondent.

GERALD C. MANN,

Attorney General of Texas

W. F. MOORE,

First Assistant Attorney General

JAMES P. HART,

Assistant Attorney General.

Dated at Austin, Texas
on this the 15th day of
April, 1940.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1939

No. 681

RAILROAD COMMISSION OF TEXAS, ET AL,
Petitioners,

V.

ROWAN & NICHOLS OIL COMPANY,
Respondent.

Petition for Leave to File
Brief *Amici Curiae*.

The undersigned respectfully petition this Honorable Court for leave to file a brief *amici curiae* in the above entitled suit. Your petitioners respectfully show to the court that they as attorneys represent in excess of fifty persons and corporations owning and operating more than 300 wells located in the East Texas field, all of whom are affected by the orders of

the Railroad Commission attacked in this action. All of these individuals and corporations have pending before the Railroad Commission of Texas a petition for an adjustment of the allowables fixed for their wells. The commission has refused to pass on the petition, stating that no change will be made in its present order until the instant case has been decided. This clearly indicates that the commission contemplates obtaining valuable information from this court's opinion on which to base its next proration order.

It follows that each of the petitioners is vitally interested in a decision of the questions presented in this suit.

Consent to file this brief has been given by counsel for both the petitioners and the respondent in the above entitled cause.

Washington, D. C., April 22, 1940.

Respectfully submitted,

J. N. SAYE,

W. T. SAYE.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1939

No. 681

RAILROAD COMMISSION OF TEXAS, ET AL,
Petitioners,
V.
ROWAN & NICHOLS OIL COMPANY,
Respondent.

Brief of *Amici Curiae*

I.

LANDOWNER'S OWNERSHIP OF OIL IN TEXAS.

In Texas a landowner not only owns the oil beneath his land but also, by virtue of the "capture rule," he becomes the owner of all oil brought to the surface through his wells. Both rules are subject to such modifications as may be necessary to reasonably

enforce the conservation laws. The rule is stated by a recent decision of the Supreme Court of Texas as follows:

"The common law recognizes no well spacing regulations. At common law the landowner can drill an unlimited number of wells for oil and gas upon his land. Mills & Willingham, Oil & Gas (1926) ¶ 270; Summers, Oil & Gas (1927) 73-76. The adjoining landowner cannot complain if wells are drilled near his boundary line. Under this rule the only way the landowner can protect himself is to drill offset wells. *Prairie Oil & Gas Co. v. State*, 231 S. W. 1088 (Tex. Com. App. 1921); *Hunt v. State*, 48 S. W. (2d) 466 (Tex. Civ. App. 1932); *Kelley v. Ohio Oil Co.*, 57 Ohio St. 317, 49 N. E. 399, 39 L. R. A. 765, 63 Am. St. Rep. 721 (1897); *Barnard v. Monongahela Natural Gas Co.*, 216 Pa. 362, 65 A. 801 (1907). However, this rule has been modified in this state. Title 102, Vernon's Annotated Texas Civil Statutes, and particularly articles 6014, 6029, 6046.

"The rule in Texas recognizes the ownership of oil and gas in place, and gives to the lessee a determinable fee therein. *Lemar v. Garner*, 121 Tex. 502, 50 S. W. (2d) 769; *Humphreys-Mexia Co. v. Gammon*, 113 Tex. 247, 254 S. W. 296, 29 A. L. R. 607; *Wagoner Estate v. Sigler Oil Co.*, 118 Tex. 509, 19 S. W. (2d) 27; *Texas Co. v. Daugherty*, 107 Tex. 226, 176 S. W. 717, L. R. A. 1917F, 989.

"Owing to the peculiar characteristics of oil and gas, the foregoing rule of ownership of oil and gas in place should be consid-

ered in connection with the law of capture. This rule gives the right to produce all of the oil and gas that will flow out of the well on one's land; *and this is a property right*. And it is limited only by the physical possibility of the adjoining landowner diminishing the oil and gas under one's land by the exercise of the same right of capture. The following decisions discuss the law of capture as applied in this state: *Stephens County v. Mid-Kansas Oil & Gas Co.*, 113 Tex. 160, 254 S. W. 290, 29 A. L. R. 566; *H. & T. C. Ry. Co. v. East*, 98 Tex. 146, 81 S. W. 279, 66 L. R. A. 738, 107 Am. St. Rep. 620, 4 Ann. Cas. 827; *Prairie Oil & Gas Co. v. State* (Tex. Comm. App.) 231 S. W. 1088, 1089. Both rules are subject to regulation under the police power of a state." *Brown v. Humble Oil & Refining Co.*, 83 S. W. (2) 935, page 940. (Our italics)

It will be observed from the foregoing quotation the court first states that the rule in Texas recognizes the ownership of oil and gas in place and gives to the lessee a determinable fee therein. In the next paragraph it states that the rule of ownership of oil and gas in place should be considered in connection with the law of capture, and that this rule gives the right to produce all of the oil and gas that will flow out of the wells on one's land; holds that the rule of capture is a property right, and that it is limited only by the physical possibility of the adjoining landowner diminishing the oil and gas under one's land by the exercise of the same right of capture. The court further holds that both rules are subject to modification under the police power of the state.

This is the leading decision by the Supreme Court of Texas bearing on property rights of a landowner in oil and gas since the conservation statute was enacted.

II.

VALIDITY OF THE COMMISSION'S ORDERS AND THEIR APPLICATION TO THE RESPONDENT.

Each landowner is entitled to a fair chance to recover the oil and gas in place beneath his land. *Gulf Land Co. v. Atlantic Refining Co.* (Tex. S. Ct.) 131 S. W. (2) 73; *Brown v. Humble Oil & Refining Co.*, *supra*. This does not change the common law rule because prior to proration each man was entitled to protect his property against drainage by drilling offset wells. This same protection is now accorded him by the spacing rule of the commission, which is known as Rule 37. (Tr. 21-23)

The lower courts seem to have assumed that the rule of capture has been abolished. Whether it has or not has a material bearing on the formula required for a valid proration order. To illustrate, in many cases the Railroad Commission might find that existing inequalities could be corrected by granting the complaining party a permit to drill another well rather than follow the tedious and at least uncertain method of determining the amount of oil in place under each lease. We do not believe it can be disputed that the commission would have full authority to do this, because it would eliminate the discrimination and at the same time prevent waste. It is a scientifically established fact that the closer wells are spaced, the greater will be the ultimate recovery of oil from any sand producing field.

American Institute of Mining and Metallurgical Engineers, Volume 123, Year 1937, pages 456-459, also Volume 127, Year 1938, pages 544-549. "Analytical Principles of the Spacing of Oil and Gas Wells" by Robert W. Phelps, petroleum engineer for the Union Oil Co. of California, found in *AIME Volume titled Petroleum Development and Technology*, 1928-29, pages 90-103. *Petroleum Production* by Wilbur F. Cloud, published by the University of Oklahoma Press, Norman, Oklahoma, 1937 edition, page 58. We quote from Mr. Cloud as follows:

"The conventional practice used in most fields whereby oil wells are located 660 feet apart or on the center of 10 acre locations regardless of existing pressures, structural position, character of the oil, and sand conditions, is probably the most common economic engineering absurdity employed in the oil industry at the present time. Likewise, the close spacing used in the 'town lot' drilling of parts of such fields as Oklahoma City, Long Beach, Huntington Beach, and Santa Fe Springs, California, as well as in certain salt dome areas of Texas and Louisiana, is equally absurd. Such closely spaced wells usually will yield a high recovery per acre, but the excessive cost of completing and operating so many deep wells will prevent the operators from ever recovering the money invested in such a drilling program."

Again on page 59 quote:

"In fields where the gas pressure is very low and production depends almost entirely upon the force of hydrostatic pressure developed as a result of artesian conditions or natural edge water encroachment, a stag-

gered, or triangular arrangement of well spacing should be used. In such a field the pressure of the water must be high enough to overcome capillary retention and pore friction; and the reservoir should be uniform in texture, as water coning and entrapment of oil may result. When oil is being produced under such conditions, the wells should be spaced close together across the face of the water front and farther apart in the direction of the dip of the reservoir rock."

See also *Petroleum Production Engineering* by Lester Charles Uren, professor of petroleum engineering, University of California, published in 1934. Page 83 quote:

"Maximum ultimate recovery of petroleum from an oil field is secured by systematic and timely drilling of wells, thus deriving the greatest benefit from the relatively high initial gas pressure. Natural gas, dissolved and occluded in the oil under pressure, is the principal motivating agent causing the oil to flow from the reservoir rock into the wells during the early life of most oil fields. Productivity of the wells diminishes as the gas pressure declines. Maximum field pressures are experienced only in wells drilled during the early life of a field. Escape of gas through these early wells leads to rapid decline of field pressure so that later drilled wells have smaller initial and ultimate productions. The oil that these later drilled wells fail to produce, in comparison with the recoveries effected by the earlier wells, is largely left in the sands, drained of its gas and unrecoverable by ordinary flowing and pumping methods. If all

the wells could be completed in time to receive the benefit of the higher field pressures, greater recoveries would unquestionably result."

We quote from page 92 of the same work:

"Many wells in the crowded town-lot sections of the Santa Fe Springs and Long Beach fields of California, for example, are so closely spaced that they will never pay out. A high per acre yield will result from intensive development, but the cost of drilling and operating so many wells will be more than the value of the oil produced. Doubtless, in many closely drilled areas, there will be some profit, though it will be less than it might have been with wider spacing. On the other hand, many of the more conservatively developed fields have been drilled with wells that are too widely spaced for maximum profit. Great areas in Mid-Continent and western American fields have been drilled with an allowance of 10 acres per well, and yet computations indicate that in some cases profits could have been doubled or tripled by adopting closer spacing. Present information does not admit of anything more than speculation on what the aggregate loss has been from the national standpoint, but rough computations based on data from a few fields on which results have been assembled, suggest that it is probably greater than the profit that has been realized on all of the oil thus far produced."

The very latest work bearing on this subject is *The Science of Petroleum*, published by the Oxford University Press, 1938 Edition. From chapter styled

"Fundamental Principles Governing Drainage of Petroleum From Its Reservoir," we quote:

"Expulsion of Petroleum from the Reservoir Rock by Expanding Natural Gas.

When a reservoir rock containing petroleum charged with dissolved natural gas under high pressure is penetrated by a well, the equilibrium of forces that previously existed is disturbed. If the well is not shut in and flow of fluids to the surface is permitted, the pressure within the reservoir rock in the immediate vicinity of the well is reduced. Reduction in pressure permits release of a part of the dissolved gas from the gas-saturated oil, and the gas, thus released, assumes the form of minute bubbles distributed through the viscous oil mass. The pressure reduction is greatest at and near the walls of the well—."

"The Ultimate Recovery of Petroleum from its Reservoir Sands: Within practical limits, the ultimate production will increase as the number of wells increases. Maintaining a certain spacing of wells, the recovery will be increased by drilling them of larger diameter. The rate of development will have an important influence on gross recovery."

It may be that counsel will contend that these publications cannot be considered by this court because they were not introduced in evidence in the trial court. However, this contention is entirely refuted by Judge Brandeis in his dissenting opinion in *New State Ice Co. v. Liebmann*, 285 U. S. 262, 52 S. Ct. 371. See footnotes, pages 282, 283 and 284 of 285 U. S. and pages 376 and 377 of 52 S. Ct.

The respondent has, therefore, taken advantage of the spacing rules of the commission and drilled a reasonable number of wells on its lease. During that period of time it has admittedly recovered 358,000 barrels of oil without depleting the recoverable oil under its lease in any appreciable amount. (Tr. 400, see Exhibit 1, offered Tr. 1 to 20, copied Tr. 674. See also Tr. 311, 312, 621, 397, 399, 456.)

In view of the above facts, it is wholly unnecessary for the court to pass on the validity of the order as applied to the properties of the respondent, because when respondent proved by its own witnesses that it had not been injured through the operation of the statute, it admitted itself out of court. It is a well established principle that a person attacking a state statute, or an order made pursuant to such statute, must show that the alleged unconstitutional features injure him. *Mass. State Grange v. Benton*, 272 U. S. 225, 47 S. Ct. 189, 71 L. Ed. 387; *Cavanaugh v. Looney*, 248 U. S. 453, 39 S. Ct. 142, 63 L. Ed. 354; *Heald v. District of Columbia*, 259 U. S. 114, 42 S. Ct. 434; *Premier-Pabst Sales Co. v. Grosscup, et al*, 298 U. S. 226, 56 S. Ct. 754.

The opinion in the case last cited was written by Mr. Justice Brandeis, and in his usual admirable style, he stated the law as follows:

"We have no occasion to consider the constitutional question, because it appears that the plaintiff is without standing to present it. One who would strike down a state statute as obnoxious to the federal constitution must show that the alleged unconstitutional feature injures him."

III.

COURTS CANNOT PERFORM THE ADMINISTRATIVE DUTIES OF THE RAILROAD COMMISSION.

The learned District Judge stated: "It is, of course, not the duty of the court to write a better order, nor does the obligation rest upon complainant to suggest one." Notwithstanding this statement, the record reflects that the district court did adopt the exact formula submitted by respondent, and in effect held that any order that did not conform to that formula would be void as to the respondent. The Circuit Court of Appeals stated:

"We agree with the district court that in entering an order prorating the amount of oil to be produced from each well the commission should take into consideration the amount of oil in place under the lease as well as other relevant factors and should so administer the order as to allow each lease owner to produce his fair share of the oil from the reservoir. In order to remove any doubt as to the temporary character of the ratio fixed by the district court, the judgment will be amended to read 'without prejudice to the right of the commission to enter a reasonable proration order and to fairly enforce it.'"

The opinion of the district court (Tr. 64) is reported in 28 Fed. Supp. 131, and that of the Circuit Court of Appeals (Tr. 1005) is reported in 107 F. (2) 70.

It will thus be seen that each of the lower courts recognized that its jurisdiction was restricted to a de-

termination of the validity of the order as applied to the respondent and, if found to be invalid, enjoin its operation as against the respondent. However, we think each of the courts erred in holding that the commission, in entering an order, is required to take into consideration the amount of oil in place under the lease, the per acre foot of sand, the sand thickness, etc. We agree that it is proper and helpful to have the court point out the particular infirmities in the order, but we do not believe that it is within its province to direct a particular formula and in effect tell the commission that such formula must be adopted. This is because the commission is an administrative agency of the state, charged with the duty of promulgating and enforcing proper and legal rules and regulations. As to proration orders, the commission holds state-wide meetings practically every month. It has an engineering department and various other employees constantly employed in the various fields, conducting investigations and gathering data and other information to be used in promulgating its orders, rules and regulations, and therefore it should be given liberal discretion in determining the method of proration that it will adopt, using whatever formula it finds appropriate so long as the method adopted will result in giving each owner a fair chance to recover his proportionate part of the oil, provided always that the order shall be written with an eye to the prevention of waste. The paramount purpose of the conservation act is the prevention of waste and conservation of the natural resources. In accomplishing this end, it is, of course, the duty of the commission to prevent, so far as is possible, the impairment of any property rights.

We agree with counsel for the respondent that it is probably not necessary for the court to pass on the question of whether or not an order based on the capacity of the wells to produce is involved in this case, because we cannot sincerely argue that the orders attacked in this action are based on the wells' potentials. It is true that the commission was attempting to prorate on a potential basis, but the top allowable for the field is so low that it clashes with the minimum flat per well allowable.

In his opinion, Judge McMillan, District Judge, stated:-

"As said before, it is not the court's function to draw an order. However, the evidence is not at all clear that this 522,500 barrel top allowable is fixed solely for the prevention of waste. Respondent's engineer Hudnall frankly admitted that he was of the opinion that a higher allowable could be fixed without injury. Their Chief Engineer, Cottingham, did not deny that such was the case. It is manifest from all of the evidence that the allowable has been fixed with an eye to the market as well as with an eye to the prevention of waste. Complainant does not attack the idea of a top allowable. That however does not preclude the court from considering the matter in contemplating the reasonableness of this entire plan of proration."

Here the learned trial judge came dangerously close to uncovering the "nigger" in the wood pile, notwithstanding the fact that neither party was complaining about the top allowable. This demonstrates the vice of the court attempting to suggest a plan of

proration covering a field in which there are many hundreds of producers and operators, some similarly situated, others differently situated, in a single action whereby the rights of one party only are in issue.

Had the court not accepted the suggested plan offered by the respondent, we would have nothing to say about the matter, but since the court has very strongly indicated to the commission that a method of proration that will not *currently* allow each man to recover his percentage of the total reserves will not stand the test, we feel that it is not out of place to invite attention to the infirmities of such a plan. The vast majority of owners of properties lying west of respondent's lease do not have as much oil in place under their lands as does the respondent. A short distance west of respondent's property the sand begins to become thinner and there is a continuous dip from there on to the west side of the field. All of this acreage is underlain with water. The water moves in from the west and rises vertically as the fluid is taken from the reservoir. The pressure is high on the west and low on the east, and the admitted facts are that there is a constant migration from west to east, as well as a constant vertical rise in the water table in the western part of the field, which is underlain with water. This being true, there cannot be any logic to the argument that properties situated in the fairway should be *currently* permitted to produce the same percentage of the recoverable reserves as properties lying west. It is obvious at a glance that a structural correction must be made to offset the migration. If it is not done, it is as plain as the noonday sun that the west side wells will be drowned with water and a

large proportion of the oil beneath the lands will have moved on eastward long before the recoverable oil originally in place under said lands can be recovered. It is obvious that if the respondent is permitted to *currently* recover his percentage of the recoverable reserves, and at the same time have those reserves constantly replaced by oil from the west, in the end, it will recover far more oil than its percentage of the original recoverable reserves. Therefore, if for the sake of argument, we admit that the lower court was correct in holding that if respondent had been permitted to *currently* produce its percentage of the total reserves in the reservoir, it would to date have recovered 200,000 barrels additional oil, still the court's holding is incorrect as a matter of law, because respondent is not now and never has been entitled to produce *currently* the percentage of oil that the recoverable oil under its lease bears to the total reserves of the field. It must be borne in mind that approximately one-half of the field lies west of respondent's lease and the oil is constantly migrating from west to east. Moreover, the allowables are adjusted every month, based on all the factors taken into consideration in making the order. Therefore, under the formula offered by respondent, its recoverable reserves would be estimated every month and the order based on the reserves existing at that time. If such an order had been put into effect when the respondent's lease was first developed, it would have produced until this time, according to the findings of fact of the trial court, 200,000 barrels more oil than it has recovered, or a total of 558,000 barrels, and, according to the testimony, it would still have virtually the same reserves that it had to start with. Of course, this

condition would be brought about by virtue of the orders of the commission not taking into consideration the question of migration.

It is submitted that the lower courts erred in attempting to state the different factors necessary for a valid order, because if the courts are without jurisdiction to write an order, they lack jurisdiction to dictate one.

We are somewhat inclined to the view that if the commission can write an order based on the capacity of the wells to produce, it is required by law to do so, because such an order does not interfere with the operation of either the rule of absolute ownership of oil in place or the rule of capture.

It is elementary law that a police regulation must be so applied as not to destroy or interfere with rules of property if its objective can be obtained without doing so.

For instance, if the commission finds that it is necessary to curtail the production of a pool 50%, if each well in the pool were curtailed 50% of its capacity to produce, neither of the above mentioned property rules would be destroyed.

The common law rule would merely be modified to the extent that the police regulation operated to curtail the production, but each owner would receive the same treatment.

It will be contended that this method is impracticable. It is if the top allowable for the field is not raised, but we are inclined to agree with the opinion of Judge McMillan that, even though the point were

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not in issue, it is not clear from the evidence that a higher allowable could not be fixed without injury. At any rate this issue should not be foreclosed merely because the commission and one litigant agree on it, when it affects hundreds of other owners and operators in the East Texas Field.

IV.

THE MARGINAL WELL LAW AND ITS EFFECT ON PRORATION.

What is known as the marginal well law, Article 6049b, Texas Revised Civil Statutes, and made Appendix "A" to this brief, insofar as it applies to the East Texas field, provides as follows:

"(b) Any pumping oil well within this State having a daily capacity for production of twenty (20) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than two thousand (2,000) feet and less in depth than four thousand (4,000) feet."

It will be noted that the wells are classified according to depth. A pumping well 2,000 feet deep or less, having a daily capacity of 10 barrels or less, is a marginal well. A pumping well deeper than 2,000 feet and less than 4,000 feet, having a daily capacity of 20 barrels or less, is classified as a marginal well. A pumping well producing from a horizon 4,000 feet deep and less than 6,000 feet deep, having a daily capacity of 25 barrels, is a marginal well. A pumping well 6,000 feet deep and less than 8,000 feet deep, having a daily capacity of 30 barrels or less, is a mar-

ginal well. A pumping well producing from a horizon deeper than 8,000 feet, having a daily capacity of 35 barrels or less, is a marginal well.

The marginal well law is not in issue in this case except indirectly, but the rights of persons owning wells that are better than marginal wells, and which the trial court found could be operated profitably on from 5 to 10 barrels per day, are vitally concerned, because under the plan proposed by the respondent and accepted by the lower courts, these wells, and there is a great number of them, will have their allowables curtailed below the marginal well allowable. It is no answer to this proposition that there are only 471 marginal wells in the field. As a matter of fact, the marginal wells are daily increasing and they are not located in any particular place except, of course, as the word "marginal" indicates, as a general rule they are edge wells. However, there are many wells immediately adjacent to the marginal wells that are pumping wells and are producing from a few barrels more to several times what the marginal wells will produce. These wells in many instances are direct offsets to marginal wells, and from past experience, it will be quite a while before some of them will become marginal wells. The marginal wells are not so located as to set them out in a class to themselves, so that their operation will not affect the other wells in the field. The learned trial court held that 471 marginal wells were too insignificant to control the plan of proration. The trouble is that several times that number of pumping wells will, under the formula suggested, be vitally affected and they are better wells than the marginal wells, in that, on the east side the

marginal wells will continuously drain oil from the better wells, and on the west side, and the north and south ends, such wells will be so unreasonably curtailed that some of them will be drowned by water within a short time; and others abandoned due to burdensome operating cost. This condition will be aggravated as time passes.

In view of the status of oil and gas under the common law, the power of the legislature to enact the marginal well law, we believe, is beyond doubt. The fact that marginal wells are classified according to depth clearly indicates the limit to which it was intended that the citizen should be deprived of his property, or its use, in the enforcement of the conservation law, and that more drastic curtailment transcended public necessity.

We submit that the commission is charged with the duty of maintaining a minimum allowable of 20 barrels per day and whatever formula is adopted must be in obedience to this mandate.

We have just received brief from the attorneys for the respondent, Rowan & Nichols Oil Company, and have only a few remarks to make with reference to it. On page 3 of the brief we find this statement:

"The findings of fact were based on testimony which is practically undisputed on material points. Although Petitioners did not except to the findings of fact or request that they be modified or that additional findings be made, and, as Respondent understands, do not here question the sufficiency of the evidence to support the findings, they argue the suit from the testimony and not from the findings."

Rule 46 of the Federal Rules of Civil Procedure reads as follows:


"Rule 46. Exceptions Unnecessary. Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him."

Respectfully submitted,

J. N. SAYE,

W. T. SAYE,

Attorneys for Amici Curiae.



APPENDIX "A"

Art. 6049b. Marginal wells defined; curtailing production.

Sec. 1. The term "Marginal Well" as used herein means a pumping oil well capable, under normal unrestricted operating conditions, of producing such daily quantities of oil as herein set out as would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of same, if its daily production were artificially curtailed. The following described wells shall be deemed "Marginal Wells" in this State:

(a) Any pumping oil well within this State having a daily capacity for production of ten (10) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a depth of two thousand (2,000) feet or less:

(b) Any pumping oil well within this State having a daily capacity for production of twenty (20) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than two thousand (2,000) feet and less in depth than four thousand (4,000) feet:

(c) Any pumping oil well within this State having a daily capacity for production of twenty-five (25) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than four thousand (4,000) feet and less in depth than six thousand (6,000) feet:

(d) Any pumping oil well within this State having a daily capacity for production of thirty (30)

barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than six thousand (6,000) feet and less in depth than eight thousand (8,000) feet:

(e) Any pumping oil well within this State having a daily capacity for production of thirty-five (35) barrels or less, averaged over the preceding thirty (30) consecutive days, producing from a horizon deeper than eight thousand (8,000) feet. (As amended Acts 1933, 43rd Leg., p. 215, ch. 97.)

Sec. 2. To artificially curtail the production of any "Marginal Well" below the marginal limit as set out above prior to its ultimate plugging and abandonment is hereby declared to be waste, and no rule or order of the Railroad Commission of Texas, or other constituted legal authority, shall be entered requiring restriction of the production of any "Marginal Well" as herein defined. (Acts 1931, 42nd Leg., p. 92, ch. 58.)